

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 115

HOUSE BILL 2188

AN ACT

AMENDING SECTIONS 20-661, 20-663, 20-667 AND 20-680, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-661, Arizona Revised Statutes, is amended to
3 read:

4 20-661. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Account" means any one of the two accounts within the Arizona
7 property and casualty insurance guaranty fund.

8 2. "Board" means the guaranty fund board.

9 3. "Covered claim" means an unpaid claim, including one for unearned
10 premium, which arises out of and is within the coverage of an insurance
11 policy to which this article applies issued by an insurer, if such insurer
12 becomes an insolvent insurer after August 27, 1977 and the claimant or
13 insured is a resident of this state at the time of the insured event or the
14 property from which the claim arises is permanently located in this state.
15 Covered claim does not include any amount due any reinsurer, insurer,
16 insurance pool or underwriting association as subrogation recoveries or
17 otherwise nor shall it include any obligations of the insolvent insurer
18 arising out of any reinsurance contracts nor shall it include ~~attorney's~~
19 ATTORNEY fees or adjustment expenses incurred prior to the determination of
20 insolvency.

21 4. "Fund" means the Arizona property and casualty insurance guaranty
22 fund.

23 5. "Insolvent insurer" means an insurer ~~authorized~~ LICENSED to
24 transact insurance in this state either at the time the policy was issued or
25 when the insured event occurred and ~~who has been determined to be insolvent~~
26 AGAINST WHOM AN ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY HAS BEEN
27 ENTERED AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION by a court
28 of competent jurisdiction IN THE INSURER'S STATE OF DOMICILE OR BY THIS STATE
29 PURSUANT TO SECTION 20-623 AND THE ORDER OF LIQUIDATION HAS NOT BEEN STAYED
30 OR BEEN THE SUBJECT OF A WRIT OF SUPERSEDEAS OR OTHER COMPARABLE ORDER.

31 6. "Member insurer" means any person who writes any kind of insurance,
32 unless such writing is restricted solely to life, title, surety, disability,
33 credit, mortgage guaranty, workers' compensation or ocean-marine insurance,
34 including the exchange of reciprocal or inter-insurance contracts, and is
35 licensed to transact insurance in this state.

36 7. "Net direct written premiums" means direct gross premiums written
37 in this state on insurance policies to which this article applies, less
38 return premiums and dividends paid or credited to policyholders on such
39 direct business. Net direct written premiums do not include premiums on
40 contracts between insurers or reinsurers.

41 Sec. 2. Section 20-663, Arizona Revised Statutes, is amended to read:

42 20-663. Guaranty fund board; composition; compensation

43 A. There is established within the department of insurance a guaranty
44 fund board consisting of eleven members WHO ARE appointed by the governor.
45 Membership on the board shall be for a term of three years. ~~Of the members~~

1 ~~first appointed, four shall serve for terms of one year, four shall serve for~~
2 ~~terms of two years and three shall serve for terms of three years.~~

3 B. The members of the board shall be appointed from a list of persons
4 submitted to the governor by the director of insurance AND SHALL BE
5 REPRESENTATIVE OF A CROSS SECTION OF THE INDUSTRY WHO ARE AUTHORIZED TO
6 TRANSACT PROPERTY OR CASUALTY INSURANCE WITHIN THIS STATE. The board shall
7 be selected as follows COMPOSED OF:

8 ~~1. Two members from insurers representing the American insurance~~
9 ~~association.~~

10 ~~2. Two members from insurers representing the American mutual~~
11 ~~insurance alliance.~~

12 ~~3. Two members from insurers representing the national association of~~
13 ~~independent insurers.~~

14 ~~4. Three members from member insurers not affiliated with the groups~~
15 ~~listed in paragraph 1, 2 or 3.~~

16 1. NINE MEMBERS, EACH REPRESENTING A DIFFERENT INSURER THAT IS
17 AUTHORIZED TO TRANSACT PROPERTY OR CASUALTY INSURANCE BUSINESS IN THIS STATE.

18 ~~5.~~ 2. One member shall be a casualty insurance producer residing in
19 this state.

20 ~~6.~~ 3. One member representing the general public.

21 C. The board shall conduct periodic meetings in Phoenix. Meetings
22 shall be held ~~upon~~ ON THE call of the director or ~~upon~~ ON THE written request
23 of any two members of the board.

24 D. Subject to the powers of the director, the board shall administer,
25 operate and manage the fund pursuant to this article. The board shall advise
26 and counsel with the director ~~upon~~ ON matters relating to the solvency of
27 insurers.

28 E. Members of the board shall receive no compensation and shall not be
29 entitled to travel expenses as authorized by title 38, chapter 4, article 2,
30 but shall be entitled to be reimbursed for expenses incurred by them as
31 members of the board from the assets of the fund.

32 Sec. 3. Section 20-667, Arizona Revised Statutes, is amended to read:

33 20-667. Obligations of the fund

34 A. The fund is obligated solely to the extent of the covered claims
35 existing during any of the following periods:

36 1. ~~Prior to~~ BEFORE the determination of insolvency and arising within
37 thirty days after the determination of insolvency.

38 2. Before the policy expiration date if less than thirty days after
39 the determination of insolvency.

40 3. Before the insured replaces the policy or on request effects
41 cancellation, if the insured does so within thirty days of the determination
42 of insolvency.

43 B. Such obligation shall include only that amount of each covered
44 claim ~~which~~ THAT is ~~in excess of~~ MORE THAN one hundred dollars and THAT is
45 less than ~~one~~ THREE hundred thousand dollars, ~~except that the fund shall pay~~

1 any OR AN AMOUNT OF MORE THAN TWENTY-FIVE DOLLARS BUT NOT EXCEEDING TEN
2 THOUSAND DOLLARS FOR A covered claim ~~in~~ FOR THE RETURN OF unearned premiums
3 ~~of twenty-five dollars or more.~~ In no event shall the fund be obligated to a
4 policyholder or claimant in any amount in excess of the face amount of the
5 policy from which the claim arises.

6 C. The fund is deemed the insurer to the extent of its obligation on
7 the covered claims and to such extent shall have all rights, duties and
8 obligations of the insolvent insurer as if the insurer had not become
9 insolvent. Notwithstanding any other law, the fund is not obligated to pay
10 any amount that does not constitute a payment of a covered claim, including
11 taxable costs, attorney fees or interest that could be awarded or any
12 additional liabilities or obligations that might otherwise exist or accrue
13 against the insolvent insurer if the insurer had not become insolvent.

14 D. Any settlement of a covered claim that is entered into with any
15 insured or claimant within four months before the determination of insolvency
16 and that has not been paid is voidable by the fund for six months after the
17 determination of the insolvency or six months after the fund discovers or
18 should have discovered the settlement, whichever is later.

19 E. The fund is not bound by any settlement that is more than the
20 fund's limits of liability established by this article.

21 Sec. 4. Section 20-680, Arizona Revised Statutes, is amended to read:

22 20-680. Exempt types of insurance

23 A. This article applies to all kinds of insurance except:

- 24 1. Life. —
- 25 2. Title. —
- 26 3. Surety. —
- 27 4. Disability. —
- 28 5. Credit. —
- 29 6. Mortgage guarantee. —
- 30 7. Workers' compensation. —
- 31 8. Ocean marine insurance. —

32 9. INSURANCE OF WARRANTIES OR SERVICE CONTRACTS, INCLUDING INSURANCE
33 THAT PROVIDES FOR THE REPAIR, REPLACEMENT OR SERVICE OF GOODS OR PROPERTY, OR
34 INDEMNIFICATION FOR REPAIR, REPLACEMENT OR SERVICE, FOR THE OPERATIONAL OR
35 STRUCTURAL FAILURE OF THE GOODS OR PROPERTY DUE TO A DEFECT IN MATERIALS,
36 WORKMANSHIP OR NORMAL WEAR AND TEAR, OR REIMBURSEMENT FOR THE LIABILITY
37 INCURRED BY THE ISSUER OF AGREEMENTS OR SERVICE CONTRACTS THAT PROVIDE THESE
38 BENEFITS.

- 39 10. Any kind of surplus lines insurance. ~~and~~
- 40 11. Any policy of insurance issued to an industrial insured pursuant to
41 section 20-400.10. ~~This article does not apply to~~
- 42 12. Any new types of coverages approved or permitted after August 27,
43 1977.

1 B. The ~~exemption~~ EXEMPTIONS prescribed in this section ~~does~~ DO not
2 restrict any of the fund's rights or defenses permitted under this article,
3 including the application of any credit or offset prescribed in section
4 20-673 for payments made under any policy of insurance, including any policy
5 of insurance that is exempt from this article.

6 Sec. 5. Existing guaranty fund board members

7 Notwithstanding section 20-663, Arizona Revised Statutes, as amended by
8 this act, all persons serving as members of the guaranty fund board on the
9 effective date of this act may continue to serve until the expiration of
10 their normal terms. The governor shall make all subsequent appointments as
11 prescribed by statute.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.